

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 28, 2015 appellant, then a 56-year-old customer services supervisor, filed a traumatic injury claim (Form CA-1) alleging that on September 11, 2015 he injured his back and knees as a result of standing on concrete at work.² In an undated narrative statement, he related that due to standing for prolonged periods with considerable back and left knee pain, at approximately 5:30 a.m. on September 30, 2015 his back and left knee completely gave out. Appellant lost his balance and started to fall, but was able to catch himself on a chair. He related that Walter Daniels, Jr., witnessed this incident and offered to assist him. Appellant refused Mr. Daniels' help as he was able to get back up even though he was in a lot of pain.

In a September 17, 2015 medical report, Dr. Janice Soliven, an attending Board-certified family practitioner, related that appellant had been her patient since March 26, 2015 and he had been otherwise seen in her medical practice since 2005. She was following and treating his chronic medical conditions which included degenerative joint disease of the knees and degenerative disc disease. Dr. Soliven noted that appellant had registered disabilities for these conditions with the Department of Veterans Affairs (VA). Given these conditions, appellant had certain restrictions which included an inability to stand for prolonged periods of time without experiencing significant pain and limitation of motion. Dr. Soliven strongly recommended that he have access to a desk at work to allow him to fulfill his responsibilities to the best of his ability. In a September 30, 2015 note, she advised that appellant could not return to work at that time. Dr. Soliven recommended that he stay off work for approximately one month to completely heal and lessen the chance for further exacerbation of his health.

A form medical report and Inova Alexandria Hospital emergency care center discharge instructions dated September 25, 2015 noted appellant's date of injury as September 11, 2015 and indicated that care was provided by Dr. Bonita Banerjee, a physician Board-certified in emergency medicine, with a discharge diagnosis of left lumbar degenerative disc disease, sciatica, and low back pain. In a September 25, 2015 report, Dr. Banerjee indicated that appellant presented to the hospital emergency department with worsening chronic lower back pain. She provided a history that an employing establishment postmaster removed desks which forced him to stand while working. Appellant related to Dr. Banerjee that his back pain had worsened since being forced to stand at work. He informed his boss of the situation and had a note from his primary care physician which indicated that he should be allowed to sit on a chair at work. Appellant claimed that he still had not been provided a chair. Dr. Banerjee provided his medical, family, and social background. She reported findings on physical examination and reviewed Dr. Djamil Fertikh, a Board-certified radiologist's, lumbar x-ray results. Dr. Banerjee provided a clinical impression of lumbar degenerative disc disease and left sciatica. In a prescription note of the same date, Dr. Banerjee ordered medication to treat his pain.

² Appellant had a prior appeal, under OWCP File No. xxxxxx522, before the Board. In that appeal, the Board, in a November 6, 2015 decision, affirmed a June 4, 2015 OWCP decision denying his occupational disease claim for an emotional or physical condition. The Board found that appellant had failed to establish a compensable employment factor. File No. xxxxxx522 is not presently before the Board. Docket No. 15-1600 (issued November 6, 2015).

By letter dated September 30, 2015, the employing establishment controverted appellant's claim. It contended that degenerative disc disease did not occur from a single incident. Rather, it occurred over a period of time. The employing establishment also contended that the medical evidence indicated that appellant had filed a prior VA claim for knee and back injuries. It cited Board precedent and contended that he had failed to establish fact of injury.

In an October 14, 2015 letter, OWCP notified appellant of the deficiencies of his claim and afforded him 30 days to submit additional medical and factual evidence. It also requested that the employing establishment submit medical evidence, if he had been treated at its medical facility.

In an undated letter, appellant related that on September 11, 2015 his desk and chair were removed from his office and replaced with an all-purpose container (APC) which had a computer and telephone on top of it. He had to stand at this piece of equipment to complete all of his work. Appellant informed his manager that he would not be able to stand due to his back and knee issues. He submitted paperwork from his physician regarding his September 16, 2015 office visit which informed the employing establishment about these issues. Nothing changed and appellant's problems worsened from standing on a hard floor all day. He noted that he was an 80 percent disabled veteran due to, among other things, these issues. Appellant went to a hospital emergency room on September 25, 2015 due to back pain that went down to his left leg.

In another undated letter, he noted that a physician at Inova Alexandria Hospital recommended that he return to limited-duty work on September 28, 2015 with no prolonged standing. Appellant submitted the paperwork to his manager, Joe Rudden, who did not follow the physician's orders. He had to continue standing while working at his APC, which he contended was not safe due to a risk of electric shock.

In a lumbar x-ray report dated September 25, 2015, Dr. Djamil Fertikh, a Board-certified radiologist, provided an impression of facet degenerative changes of the lower lumbar segments.

By letter dated October 29, 2015, Dr. Soliven indicated that appellant had a significant and prolonged medical history of back and knee pain. She noted that on September 30, 2015 he sustained a fall at work. Dr. Soliven also noted her prior recommendation that appellant stay off work for one month. She extended his time off for an additional month, totaling two months.

In a November 5, 2015 decision, OWCP accepted that the September 11, 2015 incident occurred as alleged. However, it denied appellant's claim and determined that the medical evidence did not establish that a medical condition was diagnosed in connection with the accepted employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative and substantial

³ *Supra* note 1.

evidence⁴ including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established.⁶ There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.⁷

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁸ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.⁹ The belief of the claimant that a condition was caused or aggravated by the employment incident is insufficient to establish a causal relationship.¹⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that he sustained a traumatic injury caused by the accepted September 11, 2015 employment incident. Appellant failed to submit sufficient medical evidence to establish back and left knee injuries causally related to the accepted employment incident.

Dr. Soliven's reports diagnosed degenerative joint disease of the knees and degenerative disc disease, found that he was disabled for work for two months, and provided his work restrictions. She did not provide an opinion relating his diagnosed conditions and resultant disability to the accepted September 11, 2015 employment incident. The Board has held that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹¹ Further, while Dr. Soliven, in an October 29, 2015 report, provided a history that on September 30, 2015 appellant sustained a fall at work, the Board notes that the alleged accepted employment incident

⁴ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁵ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

⁷ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

⁸ *John J. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

⁹ *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

¹⁰ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

¹¹ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

occurred on September 11, 2015, not September 30, 2015. This inaccurate history of injury further reduces the probative value of her reports.¹²

Dr. Banerjee's hospital discharge instructions, reports, and prescription found that appellant had left lumbar degenerative disc disease, sciatica, and low back pain. While she provided a history that his back pain worsened after being forced to stand while performing his work duties, she did not provide an opinion addressing whether his diagnosed conditions were caused or aggravated by the accepted employment incident. Thus, Dr. Banerjee's hospital discharge instructions, reports, and prescription are of limited probative value.¹³

Similarly, the September 25, 2015 report relative to x-ray results from Dr. Fertikh are of limited probative value. Dr. Fertikh addressed appellant's lumbar condition, but failed to provide an opinion addressing whether his diagnosed lumbar condition was caused or aggravated by the accepted September 11, 2015 employment incident.¹⁴

Therefore, the Board finds that there is insufficient medical evidence to establish that appellant sustained back and left knee injuries causally related to the accepted September 11, 2015 employment incident.

On appeal, appellant contends that he submitted medical evidence to establish his work-related back and knee injuries. As found above, while the record supports the incident occurred on September 11, 2015, the record contains no medical evidence of record at the time of OWCP's November 5, 2015 decision to establish that the accepted employment incident caused or aggravated a diagnosed medical condition.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has failed to meet his burden of proof to establish back and left knee injuries causally related to a September 11, 2015 employment incident.

¹² See *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988) (a medical opinion must be based on a complete factual and medical background with an accurate history of the employment injury).

¹³ *Supra* note 11.

¹⁴ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the November 5, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 14, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board